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2. SMA filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, SMA contends that adoption of its proposal will result in a preferential arrangement of allotments by providing Dutton with its first local aural transmission service without depriving Shelby of its sole local broadcast service. Stations KZIN(FM) and KSEN(AM) are licensed to Dutton. SMA points out that Station KBJF is not yet in operation and that the Commission has held that because the public does not rely on the service of an unbuilt station, reallocating its channel does not constitute a deprivation of an aural service to the previously specified community. Further, SMA states that Dutton, known as the "Wheat Capital of Montana," was established in 1909. The community is incorporated with a mayor and council form of government. SMA points out that Dutton is an independent community located approximately 32 miles northwest of Great Falls, possesses all

its transmitter site, and since the station is unbuilt, the reallocation will not result in any actual gain or loss areas. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 250C at Dutton.

6. Channel 250C can be allotted to Dutton, Montana, in compliance with the Commission's minimum distance separation requirements at SMA's specified site.² Since Dutton is located within 320 kilometers (220 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment of Channel 250C at Dutton.

7. In view of the fact that the proposed allotment could provide a first local service to Dutton without depriving Shelby of its sole local service, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 250C to Dutton, Montana. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Dutton and Shelby, Montana, as follows:

Community	Channel No.	
	Present	Proposed
Dutton, Montana	-----	250C
Shelby, Montana	242C1, 250C	242C1

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before April 5, 1999, and reply comments on or before April 20, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Matthew H. McCormick
Reddy, Begley & McCormick
2175 K Street, N.W., Suite 350
Washington, D. C. 20037

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments,

² The coordinates for Channel 250C at Dutton are 47-57-46 and 111-39-14.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission,

Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.

Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

the normal attributes of a small farming town, and has a population of 396 according to the 1990 U.S. Census. SMA believes that Dutton is deserving of its own local broadcast service.

3. We recognize that neither Shelby nor Dutton are located within an Urbanized Area. However, if a station seeks to change its community of license to one which is outside an urbanized area but whose signal would place a city-grade, 70 dBu signal over 50% or more of an Urbanized Area, the proponent is required to provide the same showing as currently required for those parties seeking to move to a community within an Urbanized Area. See Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). In this case, Station KBJF, as a Shelby station, would place a 70 dBu signal over 50% or more of the Great Falls, Montana Urbanized Area. Since SMA does not intend to change its transmitter site, Station KBJF, as a Dutton station, would provide service to the Great Falls, Montana Urbanized Area. Although SMA claims it is not required, SMA has provided a Tuck analysis showing that Dutton is not a suburb of Great Falls and is sufficiently independent of Great Falls to merit a first local service preference.¹ Briefly, SMA provides the following information: 1) the vast majority of Dutton residents work in Dutton; 2) residents are served by the local weekly newspaper, The Dutton Dispatch; 3) community residents view Dutton separate from Great Falls; 4) Dutton residents elect a mayor and city council; 5) Dutton has its own U. S. Post Office and zip code, 59433; 6) Dutton has numerous commercial and civic establishments such as the Dutton State Bank, Dutton Farmers' Elevator Company, Dutton Insurance Associates, Inc., A&P Motors, Inc., Hugh Greyn & Sons Fertilizer Supply and Johnson's Conoco Service Station, as well as three churches, a retirement facility, the Sunset Trail Lodge and an American Legion Hall; 7) local businesses advertise primarily in the Dutton Dispatch; and 8) Dutton has its own fire department, town office building, library, water and sewer system, an elementary and high school and its own recreation complex.

4. As a threshold matter, we note that SMA's station already places a 70 dBu signal over 100% of the Great Falls Urbanized Area and that it is not relocating the transmitter site. Under this type of situation, we have not required a Tuck analysis showing that the new community is independent of the urbanized area because of the fact that the transmitter site is not being changed. This is due to the fact that the station is not "moving into" an urbanized area, but is already serving the area. See Boulder and Lafayette, Colorado 11 FCC Rcd 3632 (1996); and East Los Angeles, et al., California, 10 FCC Rcd 2864 (1995). Nevertheless, SMA has made a Tuck showing.

5. We believe that SMA's proposal warrants consideration since the allotment of Channel 250C at Dutton could provide the community with its first local aural service while not depriving Shelby of its sole local aural service. Further, SMA has stated that it does not seek to relocate

¹ See Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). Under Tuck, the Commission considers evidence under three factors to determine whether a suburban community deserves a first local service preference: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent community; and (3) the interdependence of the suburban community with the central city.